siderable amount of money to keep this old premises in good condition. In my view there is nothing apparently wrong in the board doing so.

In reference to the second question in connection with paragraph (e), we have no means of knowing whether there was evidence or not produced to show that there was any written consent given by the landlord to the tenant. For that reason this court should not consider that question at all.

Ali F.J. concurred.

Suffian F.J.: I agreed to dismiss this appeal and now give my reasons.

To succeed in their application for an order of *certiorari* in the High Court, the landlords had to show that not only had the Appeal Board erred in law but also that the error in law was apparent on the face of the board's order.

It was argued for the landlords that an error of law was apparent on the face of the board's order. The board found factors (a) and (d) specified in section 6 were in favour of the landlords, and therefore it was said that it could be inferred that the board found the other three factors, namely, (b), (c) and (e), were in favour of the tenant, but that the good state of repair of the premises (which was found as a matter of fact by the tribunal and accepted by the board) should have been taken as a factor in favour of the landlords, because factor (e) in section 6 refers to "improvements made by the tenant with the *written consent of the landlords*", and there was no evidence that the improvements made to the premises had been made with such consent.

I could not accept this argument. We had before us only the board's decision, not the evidence that was led before it if any, nor the evidence led before the tribunal. From that decision alone it could not be said that there was evidence before the tribunal that the improvements made to the premises had been made with or without the landlords' consent. I could not therefore detect any error of law apparent on the face of the board's order.

Appeal dismissed.

Solicitors: *Mah & Kok; S. Y. Chan & Co.*

LIAU KIM LIAN v. BAJURIA

[F.C. (Ong C.J. (Malaya), Gill F.J. and Raja Azlan Shah J.) February 27, 1971]

[Penang — Federal Court Civil Appeal No. 52 of 1970]

Practice and Procedure — Costs — Whether interest chargeable on costs awarded against party to an action — R.S.C., 1957, O. 40 r. 11 — Debtors Ordinance, 1957, s. 2.

The respondent to this appeal had appeared on a judgment notice before Ibrahim J. in the High Court at Kota Bharu heard on March 29, 1970, to show cause why he should not to be committed to prison for failing to pay to the appellant a sum of $754.20 in wilful non-compliance with an order of court dated September 14, 1967. This sum consisted entirely of interest on costs which had been awarded against him by an order of the Court of Appeal dated October 21, 1961.

The question for determination was whether interest is chargeable on the amount of costs awarded against a party to an action where there has been delay in payment.

Held, allowing the appeal: (1) upon a true construction of O. 40 r. 11(2), interest is payable where an order directs payment of costs to be taxed;

(2) a judgment for damages to be assessed, or for costs to be taxed, carries interest from the date of entry of judgment and not from the date of assessment or taxation.

Case referred to:-

(1) *Taylor* v. *Roe* [1894] 1 Ch. 413.

FEDERAL COURT.

H. L. Wrigglesworth for the appellant.

Respondent absent.

Gill F.J. (delivering the judgment of the court): The question for determination in this appeal was whether interest is chargeable on the amount of costs awarded against a party to an action, where there has been delay in payment. It arose when the respondent to this appeal appeared on a judgment notice before Ibrahim J. in the High Court at Kota Bharu to show cause why he should not be committed to prison for failing to pay to the appellant a sum of $754.20 in wilful non-compliance with an order of court dated 14th September, 1967. This order, requiring him to settle the judgment debt by instalments at the rate of $100 *per mensem* with effect from 1st October, 1967 and $200 a month from 1st May, 1968, was made on a judgment debtor summons issued against him.

It was common ground that the sum of $754.20 alleged to be due from the respondent as judgment debtor to the appellant as judgment creditor was made up entirely of interest on costs which had been awarded against him by an order of the Court of Appeal dated 21st October, 1961. The Court of Appeal made the order when it dismissed his appeal from a decision of Hepworth J. whereby, on a claim by the present appellant as the plaintiff in the action, judgment was entered in the sum of $8,000 against him as the defendant in the action in his personal capacity and as administrator of the estate of Gol Ahmad deceased. The judgment of Hepworth J., however, was varied so as to make it a judgment only against the defendant personally.

At the hearing of the judgment notice on 29th March, 1970, the judgment debtor was not represented, and all he had to say was that the amount of $754.20 represented interest on costs. Counsel for the creditor submitted that payment of interest on costs was authorised by 0.40 r. 11(2) of the Supreme Court Rules, 1957, but he did not elaborate on it, apart from referring the Court to paragraph 496 of the *English & Empire Digest*, Vol. 30 at page 207 and the commentary on "Interest on costs" under 0.65, r. 1 at page 1859 of the Annual Practice 1959. In the result the learned judge decided that interest was not chargeable on costs so that the whole amount due from the debtor had been settled, and consequently made no order on the judgment notice.

On an appeal being lodged against his decision the learned judge wrote his grounds of judgment in which he has dealt with the question with his usual thoroughness. It would appear from his reasoning that had the matter been fully argued before him he might perhaps have decided differently. He begins by saying that although 0.40 r. 11 of our Rules is not marked with an asterisk there is no identical or substantially similar rule in the English Rules of the Supreme Court, notwithstanding what is said in note 1 to our Rules. He then cites the following passage under the heading "Interest on Costs" in the *Annual Practice* 1959 at page 1859:

"Under the Judgments Act, 1838 (1 & 2 Vict. c. 110), ss. 17, 18 interest is recoverable on costs which one party is ordered to pay to another in the Ch.D. and Q.B.D. and in lunacy, but not on costs directed to be raised out of an estate."

He next refers to the passage in *Halsbury's* Laws of England, 3rd edition, Vol. 22, at page 782, paragraph 1662 to the effect that every judgment debt, including orders for costs, carries interest. Lastly, after saying that this apparently has been so since the coming into force of the English Judgments Act, 1838 and setting out the provisions of sections 17 and 18 of that Act, he goes on to say that in *Taylor* v. *Roe*[1] it was held that interest was payable on costs directed to be paid on an interlocutory order.

We now come to the final paragraph in his grounds of judgment in which he says:

"It may thus be argued that just as 'judgment debt' in the said section 17 has been interpreted to include costs so could 'judgment for the payment of money' in our said r. 11(2) be interpreted to include costs for the purpose of charging interest thereon. This line of argument, however, was not taken when the matter came up before me and my decision was then based on my view that on reading the said r. 11 as a whole 'judgment for the payment of money' in the said r. 11(2) is confined only to a judgment for the payment of debts or damages mentioned in the said r. 11(1). Had it been intended to include costs I expected the word 'costs' to have been included therein."

The view which we took of the matter was that upon a true construction of 0.40 r. 11(2) interest is payable where an order directs payment of costs to be taxed. It is to be observed that 0.40 r. 11(2) speaks of "every judgment for the payment of money". The word "judgment" is defined in section 2 of the Debtors Ordinance, 1957 to include "any decree, order or decision for the payment of money". Where there is an order for costs, it is enough if the amount of the costs is ascertained on the successful party's bill of costs being taxed by a proper officer of the court, as after taxation a further order for the payment is not necessary. Indeed, an order for payment of costs is tantamount to an order for the payment of such amount of money as may be ascertained on taxation to be the amount of the costs to which the successful party is entitled. To a very large extent, it is similar to a judgment for damages to be assessed. A judgment for damages to be assessed, or for costs to be taxed, carries interest from the date of entry of judgment and not from the date of assessment or taxation (see *Halsbury's* Laws of England, 3rd edition, Vol. 22, page 782, paragraph 1662).

For the reasons stated, we allowed this appeal but made no order as to costs. This meant that it would be open to the judgment creditor to enforce payment of the amount due as interest on costs, if he so wished.

Appeal allowed.

Solicitors: *Wrigglesworth & Co.*

RATNA AMMAL v. TAN CHOW SOO

[F.C. (Ong C.J. (Malaya), Gill F.J. & Raja Azlan Shah J.) February 27, 1971]

[Penang — Federal Court Civil Appeal No. 56 of 1970]

Bankruptcy — Partnership — Co-partner creditor — When counterclaim, set-off, cross-demand by debtor applicable — Bankruptcy Act, 1967, s. 3(1)(i).

This was an appeal from an order of Ong Hock Sim J., dismissing an application by the appellant debtor, that the bankruptcy notice dated February 21, 1970, issued against her at the instance of the respondent as her creditor, be set aside. The bankruptcy notice was in respect of a final judgment against the debtor in the sum of $20,694.02, being the amount of taxed costs awarded to the creditor by the Privy Council.

The debtor's application was made on the ground that she had a counterclaim and/or set-off and/or cross-demand against the creditor for an amount over and above the said sum of $20,694.02. The basis of her claim was that the creditor was a co-partner with her of a firm to which the alleged sum of money was owing.

The question to be determined was whether or not these claims provided a counterclaim, set-off or cross-demand which equalled or exceeded the amount of the judgment debt.

Held, dismissing the appeal: (1) any counterclaim, set-off, or cross-demand set up by a debtor against the creditor must be in a liquidated sum or a money demand which is ascertainable with certainty as between the same parties and in the same right, as in ordinary actions;

(2) the debtor claimed against the creditor as a co-partner, so that any money due from the creditor could be recovered only in proceedings for the taking of accounts in accordance with the provisions relating to partnership;

(3) therefore, without such accounts being taken under a proper order of court, it would be impossible to quantify the debtor's claim against the creditor.

Cases referred to:-

(1) *Re A Debtor, Ex parte The Debtor* v. *Wiseburgh* [1957] 2 All E.R. 551 at p. 562; [1957] 3 W.L.R. 184.

(2) *In re A Bankruptcy Notice* [1934] Ch. 431.

(3) *Hood Barrs* v. *Cathcart* [1895] 1 Q.B. 873.

(4) *In re G.E.B., a Debtor* [1903] 2 K.B. 340.

(5) *Green* v. *Hertzog & Ors.* [1954] 1 W.L.R. 1309.

FEDERAL COURT.

R. K. Sharma for the appellant.

C. O. Lim for the respondent.

In the High Court *Ong Huck Lim* and *R. K. Sharma* appeared for the judgment debtor, *C. O. Lim* for the judgment creditor. The following judgment was delivered on June 4, 1970:

Ong Hock Sim J.: A bankruptcy notice dated the 21st day of February, 1970 was issued by the respon-